

In the *United States v. Howard*, she overturned the District Court's decision to suppress evidence of drug trafficking by finding warrantless automobile searches to be constitutional.

In the *United States v. Clark*, she held that the law enforcement officers did not violate the Fourth Amendment by asking to see the VIN plate under the hood of a vehicle after discovering that the VIN plate on the dashboard was missing.

All of these rulings show that Judge Sotomayor got at least as much of her legal education from her 5 years as a prosecutor as she did at Yale Law School. These 5 years in my view reflect the same kind of commitment to the law that I have seen in the officers that I represent.

She has clearly demonstrated that she understands the fine line that police officers must walk and in her rulings reflect a working knowledge, not a theoretical knowledge, of the everyday realities of law enforcement work.

After reviewing her record, I can say that Judge Sotomayor is a jurist in whom any beat cop could have confidence. It is for that reason that the National Executive Board of the FOP voted unanimously to support her nomination and we urge you to as well. Thank you very much.

Senator KLOBUCHAR. Thank you very much, Mr. Canterbury. Next is David Cone. David Cone is a former major league baseball pitcher who over an 18-year career played for five teams in both the American and National Leagues.

Mr. Cone won the American League Cy Young Award in 1994 and pitched a perfect game in 1999 as a member of the New York Yankees. He was a member of the Major League Baseball Player's Association throughout his major league career and was an officer from 1994 through 2000. Thank you very much for being here, Mr. Cone.

STATEMENT OF DAVID CONE, FORMER MAJOR LEAGUE BASEBALL PLAYER

Mr. CONE. Thank you, Senator Klobuchar, Senator Sessions, Senator Hatch. Nice to see you again.

On behalf of all major league players both former and current, I greatly appreciate the opportunity to acknowledge the unique role that Judge Sonia Sotomayer played in preserving America's pastime.

As you know, I am not a lawyer, much less a Supreme Court scholar. I was a professional baseball player from the time I was drafted out of high school in 1981 until the time I retired in 2003. I was also a union member and an officer of the Major League Baseball Players' Association.

As is well known, major league baseball has a long history of acrimonious labor relations. It was not until the 1970's that players first gained the rights of free agency and salary arbitration. This meant that for the first time ever, players were able to earn what they were worth and have some choice about where they played.

The next 20 years were quite difficult. There was a lockout or strike at the end of every contract. To the players, every dispute seemed to center on the owners' desire to roll back free agency rights the players had won. But 1994 was the worst.

The owners said that they wanted a salary cap and refused a promise that they would abide by the rules of the just expired contract after the season ended. We had no choice. The players went on strike in August 1994.

I should note that this was before Congress passed the Curt Flood Act authored by Senators Hatch and Leahy which made it clear that baseball's anti-trust exemption could not be used to undermine Federal law.

In response, the owners canceled the remainder of the season which meant that there would be no World Series. Discussions continued through the fall and the early winter but were fruitless. In December 1994, the owners unilaterally implemented a salary cap and imposed new rules and conditions of employment which would have made free agency virtually meaningless.

They announced they would start the 1995 season with so-called replacement players instead of major leaguers. We did not think the owners were negotiating in good faith as they were required to do under Federal law. We went to the National Labor Relations Board. The board agreed with us and went to Federal court to seek an injunction against the owners' unilateral changes.

The United States district judge who drew the case was Judge Sotomayor. The rest is history, or at least baseball history. Judge Sotomayor found that the owners had engaged in bad faith bargaining. She issued an injunction. Her decision stopped the owners from imposing new work rules, ended our strike and got us all back on the field.

The words she wrote cut right to the heart of the matter, and I quote: 'This strike is about more than just whether the players and owners will resolve their differences. It is also about how the principles embodied by Federal law operate. This strike has placed the entire concept of collective bargaining on trial. Issuing an injunction by opening day is important to ensure that the symbolic value of that day is not tainted by an unfair labor practice and the NLRB's inability to take effective steps against its perpetuation.'

Judge Sotomayor grasped not only the complexity of the case, but its importance to our sport. Her decision was upheld by a unanimous Court of Appeals panel comprised of judges appointed by different Presidents from different parties with different judicial philosophies.

On the day he announced her nomination, President Obama observed that some have said Judge Sotomayor saved baseball. Others may think this is an overstatement. But look at it this way. A lot of people, both inside and outside of baseball tried to settle the dispute. Presidents, special mediators, Secretaries of Labor, Members of Congress all tried to help but were not successful. With one decision, Judge Sotomayor changed the entire dispute.

Her ruling rescued the 1995 baseball season and forced the parties to resume real negotiations. The negotiations were not easy, but ultimately were successful which in turn led to an improved relationship between the owners and the players.

Today, baseball is currently enjoying a run of more than 14 years without interruption, a record that would have been inconceivable in the 1990's.

I believe all of us who love the game, players, owners and fans, are in her debt. If Judge Sotomayor is confirmed, I hope the rest of the country will realize as the players did in 1995 that it can be a good thing to have a judge or a Justice on the Supreme Court who recognizes that the law cannot always be separated from the realities involved in the disputes being decided.

Thank you again and I would be glad to answer any questions you may have.

Senator KLOBUCHAR. Thank you very much, Mr. Cone. Our next witness is Kate Stith. She is the Lafayette S. Foster Professor of Law at Yale Law School where she teaches and writes in the areas of criminal law, criminal procedure and constitutional law.

Previously Professor Stith was an Assistant U.S. Attorney for the Southern District of New York where she prosecuted white collar and organized crime cases. After graduating from Harvard Law School, she clerked for Judge Carl McGowan of the U.S. Court of Appeals for the District of Columbia and for Associate Justice Byron White on the Supreme Court. Thank you for being here and we look forward to your testimony.

**STATEMENT OF KATE STITH, LAFAYETTE S. FOSTER
PROFESSOR OF LAW, YALE LAW SCHOOL**

Professor STITH. I thank you, Senators, for the opportunity to comment on the nomination of Judge Sonia Sotomayor whom I have known since she became a judge in 1992.

As you noted before, I joined the faculty at Yale Law School in 1985. I was a Federal prosecutor in New York and I was also a Special Assistant at the Department of Justice in Washington.

While a Federal prosecutor in New York, I had the pleasure of working with Louis Freeh. It is my judgment that this is an exceptionally strong nomination. My judgment has nothing to do with Judge Sotomayor's sex, ethnicity or personal story. I am judging her on the same criteria that I used when I was asked by the Yale Daily News some years ago whether Samuel Alito would be a strong nomination to the Supreme Court. I answered yes then and I answer yes now.

Specifically I am confident that Sonia Sotomayor would serve this nation with powerful intelligence, vigor, rectitude and an abiding commitment to the Constitution. Moreover, her service as a state prosecutor and a District judge will make her unique on the court to which she will ascend.

My views on her are informed by many sources. First, I have been unusually involved, at least for a professor, with members of the bar and bench within the Second Circuit.

Among these lawyers and judges who know her best, she is held in the highest repute across the board. My views are also based on my many conversations with her. Among the most telling are those in which she has described the attributes she is looking for in prospective law clerks.

Through these discussions over more than 15 years, I believe I gained insight into her view of the role of a judge. The bottom line is this. What she wants in her law clerks are the qualities we all want in a judge.